

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

VIRTAMOVE, CORP.,	§	
Plaintiff,	§	Case No. 2:24-cv-00093-JRG
	§	(Lead Case)
v.	§	
HEWLETT PACKARD ENTERPRISE	§	<b>JURY TRIAL DEMANDED</b>
COMPANY,	§	
Defendant.	§	
§		
§		
VIRTAMOVE, CORP.,	§	
Plaintiff,	§	Case No. 2:24-CV-00064-JRG
	§	(Member Case)
v.	§	
INTERNATIONAL BUSINESS	§	<b>JURY TRIAL DEMANDED</b>
MACHINES	§	
CORP.,	§	
Defendant.	§	
§		

**STIPULATION REGARDING DEFENDANT'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND PLAINTIFF'S RULE 12 MOTION TO DISMISS**

WHEREAS, on June 5, 2024, Defendant International Business Machines Corp. ("IBM" or "Defendant"), filed its first set of Counterclaims (Dkt. 49 ("First Counterclaims")) against Plaintiff VirtaMove, Corp. ("VirtaMove" or Plaintiff");

WHEREAS, on July 5, 2024, VirtaMove filed a motion to dismiss Count 5 from the First Counterclaims pursuant to Rule 12(b)(6) (Dkt. 65 ("Partial Motion to Dismiss Count 5")), which is fully briefed;

WHEREAS, on December 5, 2024, VirtaMove filed a Third Amended Complaint (Dkt. 111 ("TAC"));

WHEREAS, on December 19, 2024, IBM filed its second set of Counterclaims (Dkt. 115 (“Second Counterclaims”)) against VirtaMove, which, in addition to its previously-pled Count 5, pled additional counterclaims of inequitable conduct in new Counts 6 and 7;

WHEREAS, the parties agree that the issues raised in the Partial Motion to Dismiss Count 5 as well as IBM’s Response (Dkt. 69 (“Response”)) and VirtaMove’s Reply (Dkt. 71 “Reply”) shall apply equally to Count 5 in IBM’s Second Counterclaims;

WHEREAS, VirtaMove agrees that it will not move to dismiss Counts 6 and/or 7 pled in IBM’s Second Counterclaims.

WHEREAS, unless the Court wishes to proceed differently, the parties have reached agreement on certain procedural issues relating to the Motion to Dismiss the First Counterclaims and the Second Counterclaims;

The parties, by and through their respective undersigned counsel, stipulate as follows:

1. VirtaMove does not need to re-file or re-brief its Partial Motion to Dismiss Count 5 because the same Count 5 in IBM’s Second Counterclaims does not affect the arguments made in support of or in opposition to VirtaMove’s Partial Motion to Dismiss Count 5, and because VirtaMove will not be moving to dismiss new Counts 6 and/or 7. The parties agree that the Motion to Dismiss Count 5 as well as the Response and Reply thereto shall apply equally to Count 5 in both the First Counterclaims and Second Counterclaims, and can be decided by the Court as currently briefed.

2. If the Court prefers to proceed differently, the parties will defer to the Court’s preference.

Dated: January 23, 2025

Respectfully submitted,

By: /s/ Daniel B. Kolko

Reza Mirzaie (CA SBN 246953)  
rmirzaie@raklaw.com  
Marc A. Fenster (CA SBN 181067)  
mfenster@raklaw.com  
Neil A. Rubin (CA SBN 250761)  
nrubin@raklaw.com  
James A. Milkey (CA SBN 281283)  
jmilkey@raklaw.com  
Amy E. Hayden (CA SBN 287026)  
ahayden@raklaw.com  
Jacob Buczko (CA SBN 269408)  
jbuczko@raklaw.com  
James Tsuei (CA SBN 285530)  
jtsuei@raklaw.com  
Christian W. Conkle (CA SBN 306374)  
cconkle@raklaw.com  
Jonathan Ma (CA SBN 312773)  
jma@raklaw.com  
Daniel B. Kolko (CA SBN 341680)  
dkolko@raklaw.com  
**RUSS AUGUST & KABAT**  
12424 Wilshire Boulevard, 12th Floor  
Los Angeles, CA 90025  
Telephone: (310) 826-7474

Qi (Peter) Tong (TX SBN 24119042)  
**RUSS AUGUST & KABAT**  
4925 Greenville Ave., Suite 200  
Dallas, TX 75206  
Telephone: (310) 826-7474

*Attorneys for Plaintiff VirtaMove, Corp.*

By: /s/ Kyle Calhoun

Todd M. Friedman (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022

Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: [todd.friedman@kirkland.com](mailto:todd.friedman@kirkland.com)

Brandon H. Brown  
California State Bar No. 266347  
Kyle Calhoun (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, CA 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500  
Email: [brandon.brown@kirkland.com](mailto:brandon.brown@kirkland.com)  
Email: [kyle.calhoun@kirkland.com](mailto:kyle.calhoun@kirkland.com)

*Of Counsel:*

Andrea L. Fair  
Texas State Bar No. 24078488  
Email: [andrea@millerfairhenry.com](mailto:andrea@millerfairhenry.com)  
MILLER FAIR HENRY PLLC  
1507 Bill Owens Parkway  
Longview, TX 75604  
Telephone: (903) 757-6400  
Facsimile: (903) 757-2323

*ATTORNEYS FOR DEFENDANT  
INTERNATIONAL BUSINESS MACHINES CORP.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on January 23, 2025.

*/s/ Daniel B. Kolko*  
Daniel B. Kolko

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on January 22, 2025, counsel for Plaintiff conferred with counsel for Defendant regarding this joint motion via email and a telephone call in compliance with Local Rule CV-7(h) and CV-7(i).

*/s/ Daniel B. Kolko*  
Daniel B. Kolko